

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 3:06-cr-210-WHB-FKB

RODNEY CASE, KEVIN CLARK,
MIKE FULTON, DOUGLAS MURPHY,
AND JAMES WARD

Consolidated for Trial with

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 3:09-cr-6-WHB-FKB

RODNEY CASE, KEVIN CLARK,
MIKE FULTON, DOUGLAS MURPHY,
AND JAMES WARD

**MEMORANDUM IN SUPPORT OF MOTION TO LIFT STAY AND FOR TRIAL
SETTING**

In August 2009, the parties agreed to continue this case until the conclusion of the state court civil matter pending captioned as *Eaton Corp., et al., v. Frisby, et al.*, Civil Action No. 251-04-642 CIV. When the United States agreed to this continuance and stay, it incorrectly assumed that the state court matter was going to be resolved in a more expeditious fashion. Regrettably, that does not appear to be the case. A continued stay in this matter for an infinite period of time would only serve to unnecessarily delay the trial of this matter. It will also prejudice the government and the public in their right to have a speedy resolution of this matter. The United States therefore respectfully requests that the Court grant its Motion and enter an order lifting the stay of this matter. The parties have consulted, and each defendant agrees that the stay should be lifted.

In September 2010, the United States notified the Court and Defendants of its intent to move to lift the stay of the case as it had been nearly a year since the matter had been first stayed. *See* 9/9/10 Brittain E-mail (with attachments). At that time, the government was informed that there were developments in the civil case that might have some bearing on the criminal matter. For this reason, the government did not move forward with filing the motion to lift the stay. *See* 9/17/10 Brittain E-mail (with attachment). In particular, the magistrate in the state court proceeding had issued a report and recommendation that was presently under consideration by the state court trial judge.

In addition, in November 2010, Defendants and Frisby requested that the Department of Justice intervene and dismiss the instant case. Over the course of the next several months, Defendants made several submissions to Department of Justice in support of their request, including notification of the state trial court judge's December 22, 2010, ruling dismissing the plaintiff's claims. In February 2011, the Department of Justice declined to intervene and indicated that any decisions regarding the case would be made by the United States Attorney's Office.

In February and March 2011, the Defendants and Eaton requested that they be allowed to present to the United States Attorney's Office their respective perspectives on whether the office should proceed with the case. The office reviewed the request of all parties, and decided to proceed with the case.

A party(ies) also again requested that the Department of Justice review the case. Eaton, Frisby and the Defendants met with and presented their respective opinions to the Department of Justice in October 2011. The Department announced in December 2011 that it would not

intervene in the matter, and that any decisions regarding proceeding with the prosecution should be made by the United States Attorney's Office.

The United States Attorney's Office has decided to proceed with the case, and the matter is ripe for trial.

Defense counsel have indicated that their schedules prevent the matter from proceeding to trial before October 9, 2012,¹ and the parties are in agreement that an October 9, 2012, trial date is acceptable to all involved.

For the foregoing reasons, the United States respectfully requests that the stay be lifted and the matter be set for trial on October 9, 2012.

Respectfully Submitted,

JOHN M. DOWDY, JR.
United States Attorney

By: /s/ Angela Givens Williams
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¹Counsel for Douglas Murphy, Edward Blackmon, is in the State Legislature, which is in session until at least April 2012. Counsel for Rodney Case, Cliff Johnson, has indicated that various other counsel have previously calendared trial commitments until October 2012.

CERTIFICATE OF SERVICE

I, Angela Givens Williams, hereby certify that on January 31, 2012, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record.

/s/ Angela Givens Williams

ANGELA GIVENS WILLIAMS

Assistant United States Attorney